



Appeal of Karl Bernhardt

The sole issue presented in this appeal is whether income received by appellant while employed by Sperry Univac during 1978 and 1979 is subject to the California personal income tax.

Appellant is a Canadian citizen who was temporarily living in Southern California from March of 1978 through February of 1980. Appellant was at that time a member of the Canadian Armed Forces who was **under contract** with Sperry Univac. During this time in California, appellant was to receive training from Sperry Univac so that once he returned to Canada he would have the knowledge and experience necessary to operate Canada's systems. As an employee of Sperry Univac, appellant received \$20,620 in 1978 and \$28,560 in 1979. Appellant reported and paid tax to California on this income.

Appellant contends that this income is not subject to California personal income tax because he was not a resident of California when the income was earned and **because he** was paid by Sperry Univac out of Winnipeg into a Canadian bank in Canadian funds. When appellant needed money, he transferred funds to his local bank in California.

Respondent denied appellant's claim for refund, stating that the income from Sperry Univac was **California-source** income subject to California tax. Denial of appellant's claim for refund resulted in this appeal.

For purposes of the California Personal Income Tax Law, in the case of a nonresident taxpayer, gross income includes only the gross income from sources within the state. (Rev. & Tax. Code, § 17951.) The word "source" in essence means the place of origin. The factor which determines **the source of income from personal services is** the place where the services were actually performed and not **the residence** of the taxpayer or the place of payment. (Appeal of Janice Rule, Cal. St. Bd. of Equal., Oct. 6, 1976.) Income received from personal services performed in California is income from a California source and is, consequently, taxable by this state. (Appeal of Janice Rule, *supra*; Appeal of Oscar D. and Agatha E. Seltzer, Cal. St. Bd. of Equal., Nov. 18, 1980; see also Ingram v. Bowers, 47 F.2d 925 (S.D.N.Y. 1931), *affd.*, 57 F.2d 65 (2nd Cir. 1932).)

In the present appeal there is no dispute over the fact that the services appellant performed for Sperry Univac were performed in California. The fact that

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appellant is a Canadian resident and received his payment in Canada cannot alter our conclusion that the income is taxable under section 17041 as income of a nonresident derived from sources within this state. (See Appeal of Janice Rule, supra.) Respondent's action in denying appellant's claims for refund will therefore be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying, to the extent of \$1,264.43, the claim of Karl Bernhardt for refund of personal income tax for the year 1978, and in denying the claim of Karl Bernhardt for refund of personal income tax in the amount of \$2,102 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of November, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis and Mr. Bennett present.

Richard Nevins, Chairman
Ernest J. Dronenburg, Jr., Member
Conway H. Collis, Member
William M. Bennett, Member
_____, Member